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No. 07-814

In The

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SUPREME COURT U.S.

Supreme Court of the United States

Donald A. Bealer;
Marianne C. Bealer;
James R. Bealer (Withdrawn)

Petitioners
v.

The Mutual Fire, Marine and Inland Insurance Company; The Franklin Homeowners Assurance Company; FHA Holding Company; Mike Petrelia, Individually and as CFO & Treasurer; Frank McCall, Individually and as Assistant Controller

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

Reply to Brief in Opposition
1/18/08

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Corporate Disclosure

Parties are listed on the cover sheet. There are no corporate disclosures related to plaintiffs.

Statement of the Case

As part of Mutual Fire's resurgence from rehabilitation, the Pennsylvania court supervising the process ordered them to settle about $60 million in outstanding claims against them. There are several employment and family relations between Mutual Fire and the insurance department.

According to their own financial statements, they denied every single one of those claims and have not paid a cent to those injured claimants and policyholders. There were at least 203 of these claims. Further, they claim to be writing a modest amount of new business, which they suggest has generated no claims. To do this, they pay themselves millions every year in salaries, benefits, withdrawals, etc. The total for a handful of "executives" has exceeded $50 million. There is still more than $100 million left. There are also clear elements of tax fraud, financial reporting fraud, and money laundering (such as moving money through various companies and accounts to themselves). All of this is in the financial records and court documents (or should be).

It is impossible to win every single one of those claims without massive fixes. A typical insurance company pays loss dollars on 80% of reported claims. This case is an example of how the fixes were done.

The defense has had private meetings with the various judges. It is clear from the decisions that refer to events that favor the defense, but did not happen, were not on the record, and make no sense. Defendants are on the record for nothing since the judge would not allow any interrogatories of them. In the lower court, it was statements like I withheld a report until payment was received, that I argued with them all the way, and that the initial contract was signed at the beginning of work (rather than

after completion).

The defense would then lie prolifically to the judge on the record. The judge would accept all those lies, add some of his own, and then rule in their favor. We counted at least 46 acts to fix by the lower court judge. These are discussed in detail in the appeal with some add-ons in two subsequent appeal filings.

In the appeals court, they communicated that unbelievable statement that essentially had Mutual Fire telling potential future actuaries that I refused their attempts to improperly change my opinions. They agreed with the lower court judge totally and added some lies of their own.

In summary, we repeatedly caught the defense and the judges lying about:

1) The evidence.
2) The facts.
3) The law.
4) The case law.

The defense now suggests that this was all a "fanciful delusion", including involvement by the governor and the Pennsylvania Supreme Court. They said that part. I did not. Perhaps this was an inadvertent confession from Mr. Lamb, who has ties to those offices. Maybe he has this case confused with another fix. Or maybe he has just told so many lies he can't keep track of them anymore. My reference to the governor's wife was that she knew from the facts of this case that her husband has responsibility (whether he knew it or not) and should have recused herself. We did note that no one took credit for writing the appeal opinion. With proof of private discussions and the multitude of subsequent acts by the judges, it is abundantly clear that this was fixed, perhaps through the exchange

of envelopes. $50 million buys a lot of justice. They even tried to bribe and extort me. There are no delusions here, just cold hard facts supported by the court filings.

This is not just my opinion. A survey from a couple years back cited Philadelphia as the 4th worst legal hellhole in the country (i.e. who you know and how much). A democratic mayoral candidate stated on TV that the Philadelphia Courts were corrupt all the way to the Supreme Court.

All of the criminal acts and lies have been documented throughout this case. They should be a matter of record that has been summarized in the appeal documents and in the initial petition to this court. It should all be on the record if anyone wants to look. If not, there are plenty of instances where they are now lying to the Supreme Court of the United States of America.

Reasons for Granting The Writ

We have cited various compelling reasons for hearing this case that are national in scope. These include decisions conflicting with their own Third Circuit Appeals Court (e.g. Werwinski and others cited herein), the U.S. Supreme Court (e.g. Pioneer and others), and the Pennsylvania Supreme Court.

The conspiracy here is not really about me. The conspiracy is to keep that money in the Mutual Fire management's hands and to keep greasing those palms that are part of the cover-up. I am just a big obstacle that is likely to put an end to the big payday. They are treating me just like they treat all of their claimants, policyholders, and other victims.

The defense claims there are no disputed issues of fact (Lie #1). There are numerous issues such as all the medical records that were ignored, the versions of defa-

mation that started showing up, the dates of discovery for filing the claims, the acts that I was perported to have done, etc., etc., etc.

I. Petitioner's Complaint Adequately Pled Tort Claims and the RICO Action

Much of this discussion is about case law which is not readily available to me. We were able to find most of them through Google searches. Some of the older ones were not available. Perhaps they were pre-internet. We did note that many of these are new (compared to prior filings) since we caught everyone lying about the prior case laws. We have done the best we could in identifying case citings.

The defense makes claims about two cases cited by them as part of the gist of the action doctrine. We did observe that their description of the doctrine differs from that described by the appeals court, which actually supported my claim. They should have observed that if they had read the appeal.

We could not find the eToll case by itself, but found an order from Itskowitz, MD v. White & Williams, et.al., (Philadelphia Common Pleas Court, No. 2926 dated 11/10/05) that quoted it as saying:

> Pennsylvania's gist of the action doctrine bars tort claims that: (1) arise solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; (4) where the tort essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of the contract. eToll, Inc. v. Elais/Savion Adver., Inc., 811 A.2d 10, 19 (Pa. Super. 2002).

The gist of our case is the stress caused disability cre-

ated by their lengthy attempt to steal services for a different company (not Mutual Fire) for which we had not expected to nor contracted to do any work. This was during the peak of our busy season (between 3/1/01 to the latter part of April, 2001). That is when I started to strongly suspect the company was dishonest with me and I may be in peril for lawsuits and other disciplinary actions. Disabilities caused by stress in the workplace are common.

The response to the eToll criteria is simple:

1) There was no contract.
2) There was no contract.
3) There was no contract.
4) There was no contract.

We hope somebody gets this (there has to be a contract).

We also could not find Bash v. Bell, but we did find some cases that referred to it. The case involved a phone listing that was not published inadvertently. Presumably, plaintiffs were claiming lost revenue.

In Hellings et. al. v. NVR, Inc. et. al. (U.S. District Court for the Eastern District of Pennsylvania, No. 06-CV-3089, 12/6/06), Bash v. Bell and several others are cited:

> ...a tort claim is maintainable only if the contract is 'collateral' to conduct that is primarily tortious." Caudill Seed and Warehouse Company, Inc. v. Prophet 21, Inc., 123 F. Supp. 2d 826, 833 (E. D. Pa. 2000), citing Sunquest Information Systems, Inc. v. Dean Witter Reynolds, Inc. 40 F. Supp. 2d 644, 651 (W.D. Pa. 1999); Bash v. Bell Telephone Co., 411 Pa. Super. 347, 601 A. 2d 825 (1992). Courts differentiate tort from contract claims, in part, by the source of the duty imposed on the defendant: tort actions lie for breaches of duties imposed by law as a matter of social policy, while con-

tract actions lie only for breaches of duty imposed by mutual consensus agreements between particular individuals. Chemtech International, Inc. v. Chemical Injection Technologies, Inc. 170 Fed. Appx. 805, 809 (3d Cir. March 20, 2006), citing Sullivan v. Chartwell Investment Partners, L.P., 873 A. 2d 710, 719 (Pa. Super. 2005). See Also, Redevelopment Authority of Cambria County v. International Insurance Company, 454 Pa. Super. 374, 392, 685 A. 2d 581, 590 (1996).

In Auger, et. al. v. The Stouffer Corporation, et.al. (U.S. District Court for Eastern PA, C.A. No. 93-2529 dated 8/14/95), the court stated:

> the distinction between actions in trespass and assumpsit, arising out of the performance of a contract, is no longer precise. At its most succinct,
>
> > generally, when the breach of a contractual relationship is expressed in terms of tortious conduct, the cause of action is properly brought in assumpsit and not in trespass. However, there are circumstances out of which a breach of contract may give rise to an actionable tort. The test used to determine if there exists a cause of action in tort growing out of a breach of contract [*8] is whether there was an improper performance of a contractual obligation (misfeasance) rather than the mere failure to perform (nonfeasance).
>
> Grode v. Mutual Fire Insurance Co., 154 Pa. Commw. 366, 623 A.2d 933, 935 (Pa. Cmwlth. 1993), citing Raab v. Keystone Insurance Co., 271 Pa. Super. 185, 412 A.2d 638, 639 (Pa. Super. 1979), Hirsch v. Mount Carmel Dist. Ind. Fund, Inc., 363 Pa. Super. 433, 526 A.2d 422, 423 (Pa. Super. 1987).
>
> The deliberate attempt to steal services along with

the fraud and misrepresentation issues clearly are misfeasance vs. nonfeasance as in the prior Grode v. Mutual Fire case citing. It is also clearly about duties imposed by law as a matter of social policy compared to mutual consensus agreements which did not exist (in contract). These were simply illegal activities which are noncontractual and nonconsensual.

We should also point out that the gist of the action doctrine does not apply to bodily injuries. There are thousands of bodily injury claims against warranted auto part defects (contract). Examples include Pinto gas tanks, Goodrich tires, and SUV rollovers.

There is nothing here in support of denying our claim due to the gist of the action doctrine as stated by the defense herein using their own case citings (Lie #2).

As to defamation, we couldn't find any of those cases either (they are all pretty old). The statements about being adamant about little wording changes was a near death sentence in a business where your willingness to work with clients and consider alternatives is of the utmost importance. Their statements were totally false and were done with malice. The first group of statements occurred after I refused to enable them to steal the surplus of a company they tried to acquire. The second known statements were made to the insurance department after I filed suit. The insurance department suddenly became obsessed about what I might write while I was in the middle of a project with them. They then non-renewed our consultant status. The suggestion of only one act of defamation that doesn't even make sense is Lie # 3.

As to RICO violations, they aggravated the condition they caused in 2001 during 2003 through a variety of illegal interstate acts, including thefts of services, bribery, extortion, interference with interstate commerce, and ob-

struction of justice. They carried out the extortion threats by refusing to pay $8,545. That loss was clearly RICO, as was the continued loss of business income due to disability and defamation. The income loss was charted very clearly by year in the Amended Complaint. There were other damages as well. In summary, we had very specific damages due to RICO causes that were spelled out.

II. Summary Judgment Was Not Supported by the Law or the Facts

Defendants cite a 4-year statute of limitations on contract claims and cite Sevast and Colonial Assurance. They suggest that the action accrues at the time of the breach. We found both cases. In Colonial, the statute of limitations "begin[s] to accrue as of the date on which the relationship between two parties is terminated". Sevast is similar. Under their own case citings, the statute on all claims would not have run out until late 2007. I resigned in late 2003.

Further, they cite CGB v. RHA and Bednar v. Marino as to the two-year statute of limitations on contractual interference claims commencing when the alleged interference occurred. In CGB, the Third Circuit Appeals Court specifically states on page 11:

> The Pennsylvania Supreme Court and this Court have repeatedly admonished, however, that a statute of limitations begins to run only once a plaintiff can assert and maintain an action. See, e.g., Pocono Int'l Raceway, 468 A.2d 471; Bohus, 950 F.2d at 924. In other words, "[a] claim under Pennsylvania law accrues at 'the occurrence of the final significant event necessary to make the claim suable.'" Barnes v. American Tobacco Co., 161 F.3d 127, 136 (3d Cir. 1998) (internal citation omitted).

The claim was not suable until I knew what the injuries were and the cause of those injuries (see Werwinski Appeal) (Lie # 4). We included a time dated fax in our Amended Complaint showing the causes of my disability from a medical textbook in August, 2004. That was the same month we filed the initial suit. We also filed numerous medical records from the endocrinologist and other medical professionals for support. This is called the discovery rule, which applies to the vast majority of actions across the country (including PA and including this case).

The disability (extremely low testosterone levels) began on March 1, 2001 due to their actions. At that time, little was known about it in the medical profession. I was treated for numerous symptoms, went through numerous tests, saw numerous specialists, and took various courses of action (such as dieting). Cause was simply not reasonably obtainable until August, 2004.

Defendant attorneys claim they asked repeatedly about other tortious interference claims and I failed to identify them. The fact is, I did in 45 pages of deposition and in other documents that did identify certain individuals. They repeatedly said there were no recent interferences identified by me in their summary judgment motion (Lie # 5). (It was a lie then too).

Defendant attorneys even have gone so far as to state that I would not identify parties that Mutual Fire interfered with "and testified that he would not do so even if ordered by the court (Lie # 6). This was previously conveyed to the lower court and the appeals court. That never happened and we urge you to review pages 31-34 of the 8/31/05 deposition.

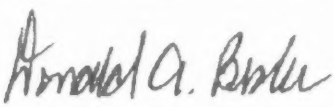
Conclusion

Defendants have never put up a valid defense to any of these claims other than to "FIX" them. It is 100% clear in this argument, just as it was in all their previous arguments. Instead, they repeatedly lied about the facts, the evidence, the law and the case laws. Now they have willfully and wantonly lied at least 6 times herein to the Supreme Court of the United States. The Nifong incident taught the whole country that it is not just ethically challenged to lie to judges, it is a crime. More than 90% of the public agreed with his disbarment and imprisonment.

This case goes to the root premise of the justice system where we all promise "to tell the truth, the whole truth and nothing but the truth, so help you God." The news is full of indictments and jail terms for citizens lying to investigators. And yet we bring you a group of lawyers (including defendants themselves) and judges that are repeatedly caught lying in their financial statements, briefs, and decisions without consequence.

Severe penalties are warranted along with an actual fair and impartial jury trial (like in New Jersey). We also respectfully request that our busy season be avoided if possible. The real crunch time is expected to be during February to mid March.

Respectfully & Honestly Submitted,



Donald A. Bealer, FCAS, MAAA
Pro Se Plaintiff
1/18/08